

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.I., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

D.I.,

Defendant and Appellant.

E071990

(Super.Ct.No. J277921)

OPINION

APPEAL from the Superior Court of San Bernardino County. Winston S. Keh,
Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Daniel Rogers and Christopher P.
Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL BACKGROUND

On September 25, 2018, a petition under Welfare and Institutions Code section 602 alleged that defendant and appellant, D.I. (minor), committed (1) carjacking under Penal Code section 215, subdivision (a), a felony (count 1); and (2) driving or taking a vehicle, to wit a 2003 Ford Focus, without consent, in violation of Vehicle Code section 10851, subdivision (a), a felony (count 2).

At the adjudication hearing on September 26, 2018, minor admitted count 2. The juvenile court found a factual basis for minor's plea. On the people's motion, the juvenile court dismissed count 1. Thereafter the court found count 2 to be true, declared minor a ward of the court under Welfare and Institutions Code section 602, and declared count 2 to be a felony.

At the dispositional hearing on October 11, 2018, the juvenile court ordered minor committed for 20 days to a juvenile hall facility with credit for 20 days, and placed minor home on probation.

On November 19, 2018, a petition under Welfare and Institutions Code section 777, subdivision (a)(2), alleged that minor violated probation by failing to obey his probation officer (term No. 2; count 1); testing positive for marijuana (term No. 8; count 2); and failing to attend school (term No. 22; count 3).

At the probation violation hearing on December 12, 2018, minor admitted count 2—testing positive for marijuana. Thereafter, the juvenile court dismissed counts 1 and

3. Defense counsel objected to the imposition of gang-related probation conditions. The court stayed the gang-related probation terms pending a contested hearing on the issue.

At the hearing on the gang-related probation terms on January 8, 2019, the juvenile court placed minor on in-home probation, and imposed gang-related terms of probation Nos. 26-28.

Minor filed a timely notice of appeal on January 11, 2019.

B. FACTUAL BACKGROUND

In September of 2018, the victim was leaving his workplace with his parents when minor and a group of boys confronted and attacked the victim. The victim's coworker saw the attack from where he was seated in his car. The coworker got out of his car to assist the victim and minor ran to the coworker's car, entered it, and drove away. A witness to the crime heard minor "claiming a gang" during the confrontation.

DISCUSSION

Minor contends that the gang-related conditions of probation were unreasonable because there was insufficient evidence of minor's gang affiliation to impose the conditions. We disagree.

"The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) Penal Code section 1203.1 authorizes a sentencing court to impose "reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and

generally and specifically for the reformation and rehabilitation of the probationer.”

(Pen. Code, § 1203.1, subd. (j).)

A juvenile court may impose on a minor on probation “any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).) “A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile.” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5; *In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

In *People v. Lent* (1975) 15 Cal.3d 481, the California Supreme Court articulated the following test to determine whether a probation condition constitutes an abuse of discretion: “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality’ ” (*Id.* at p. 486.) “This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.” (*People v. Olguin* (2008) 45 Cal.4th at p. 379.) “As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.” (*Id.* at pp. 379-380.) The *Lent* test applies to

juvenile probation conditions. (*In re P.O.* (2016) 246 Cal.App.4th 288, 294; *In re D.G.* (2010) 187 Cal.App.4th 47, 52.)

Contrary to minor's contention, the imposition of the gang-related probation conditions was not an abuse of discretion under the *Lent* test. The juvenile court imposed the gang-related conditions based upon the testimonies of two probation officers and information in the file. The court stated: "I have considered the testimony[ies] of [the two probation officers]. I have taken judicial notice of documents in the court file" The evidence showed ample facts demonstrating that the gang-related conditions were reasonably related to preventing future criminality. Here, the probation department recommended that the juvenile court add six terms to minor's probation conditions only after minor violated multiple terms of his probation. Minor objected to the addition of the three gang-related terms. These terms required that minor (1) not wear or possess any item he knows to be associated with a criminal street gang; (2) not display hand signs that he knows to be associated with a criminal street gang; and (3) not appear at any criminal court proceeding or building he knows involves street gang charges or persons associated with street gangs. The court held a contested hearing regarding the gang-related terms.

At the hearing, Probation Officer Michael Montanez testified that he met with minor four times when minor was on probation and was part of Montanez's caseload. On November 9, 2018, Montanez interviewed minor and asked him if he associated with gang members. Minor admitted that he had friends in the West Verdugo criminal street gang.

On November 15, 2018, Officer Montanez conducted a school compliance check on minor. While Montanez was there, he saw minor jump a campus fence and leave the campus with two other male students. Montanez contacted minor and arrested him for violating the terms of his probation.

The juvenile court placed minor in custody pending a hearing on the probation violations. Officer Montanez testified that there was a note in the probation department's case management system that minor told other the juveniles in his unit that he was a member of the West Verdugo gang. Montanez also testified that he believed that minor was associating with West Verdugo members while he was in juvenile hall. Based on minor's conduct and admissions, Montanez believed that the gang lifestyle heavily influenced minor. Therefore, Montanez opined that gang terms in minor's probation would benefit his rehabilitation.

Officer Audrey Pollard, a corrections officer at Central Valley Juvenile Hall, worked in minor's unit while minor was in custody. One of Pollard's duties was to prepare behavior summaries of minors in the hall. She prepared a report of minor's behavior while he was in custody from November 14 through November 21, 2018. Pollard found that minor displayed gang-related behavior while he was in custody. He told the staff that he was in the West Verdugo gang. Moreover, minor attempted to recruit other minors into the gang. He told fellow inmates. "I don't give a fuck where you are from. I will fuck you all up." At one point, minor became angry with three other minors in his unit and threatened to fight them. Pollard testified that, based on her

training in gang behavior, minor associated himself with the criminal street gang West Verdugo. Pollard believed that gang terms were appropriate for minor.

Given these facts showing minor's gang membership, the juvenile court properly concluded that the gang-related probation conditions could help prevent future criminality. Indeed, "disassociation from gang-connected activities [is] an essential element of any probationary effort at rehabilitation" because it insulates an admitted gang member such as minor from "a source of temptation to continue to pursue a criminal lifestyle." (*People v. Lopez* (1998) 66 Cal.App.4th 615, 626.) We cannot conclude that the juvenile court abused its discretion in imposing the gang-related probation conditions. (See generally *id.* at pp. 625-626 [gang-related probation condition for admitted gang member valid because the condition was reasonably related to preventing future criminality].)

Minor's reliance on *In re Edward B.* (2017) 10 Cal.App.5th 1228 is misplaced. In that case, the juvenile court imposed a gang-related probation condition that the minor could not knowingly associate with gang members. (*Id.* at p. 1231.) The record contained no evidence that the minor was, or at any point had been, a gang member. Moreover, there was no evidence that the minor associated with gang members. (*Id.* at p. 1234.) The only evidence that the minor was affiliated with a gang was highly speculative. The minor's father stated that a former friend of the minor was involved with a gang. The father also believed that the minor committed the underlying crime because he was told to do so. (*Ibid.*) On appeal, the appellate court found that a nexus between the gang condition and the underlying offense, or between the condition and

future criminality, was lacking because the evidence was too speculative. (*Id.* at p. 1236.)

Here, the evidence of minor's gang involvement came from minor's admission that he is a member of the West Verdugo gang, and has friends in that gang. Moreover, numerous probation officers noted that minor displayed gang behavior, as noted in detail above. Nonetheless, minor argues that "[t]he probation conditions here suffer from the same infirmity as the one in *Edward B.*" Minor correctly notes that no gang enhancement was charged or admitted in the sustained petition, and no gang conditions were imposed when the court first placed minor on probation. The probation department recommended the gang-related conditions only *after* minor violated multiple terms of his probation, exhibited gang-related behavior, and admitted that he belonged to a gang.

Although minor argues that any gang-related evidence was based on "speculation" as in *Edward B.*, his argument is not persuasive. The juvenile court aptly distinguished this case from *In re Edward B.*: "In reviewing *In re Edward B.*, which is binding upon this Court, there is a huge distinguishing factor. And that is that in *In re Edward B.* the only evidence, if you call it that, was the minor's father telling the probation officer that one of the minor's friends, whom he believed his son was associating [with], had some involvement with gangs. That is it. That was the only evidence in *In re Edward B.* Distinguish that from Officer Montanez's testimony, Officer Pollard's testimony. This minor admitted himself, quote, 'I'm from Westside Verdugo, but I run with the Gs,' close quote." The court then went on to state, "Now, based on the minor's own statements, the Court will follow *In re Edward B.* And as I stated, the condition—the nexus here is the

condition and future criminality. If he is actively, or he's associating with gangs, especially Westside Verdugo gang, the Court finds that imposing gang terms is appropriate." We agree with the juvenile court that the imposition of gang-related conditions can prevent future criminality. Minor has failed to show that the juvenile court abused its discretion in imposing the gang-related probation conditions.

In sum, because the gang-related probation conditions are reasonably related to preventing future criminality, they do not constitute an abuse of discretion under the *Lent* test. The juvenile court did not err in imposing the gang-related probation conditions

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER

Acting P. J.

We concur:

CODRINGTON

J.

SLOUGH

J.